

and objective position to deal with these considerations.

**§ 1940.304 Special policy.**

(a) *Land use.* (1) FmHA or its successor agency under Public Law 103-354 recognizes that its specific mission of assisting rural areas, composed of farms and rural towns, goes hand-in-hand with protecting the environmental resources upon which these systems are dependent. Basic resources necessary to both farm and rural settlements include important farmlands and forestlands, prime rangelands, wetlands, and floodplains. The definitions of these areas are contained in the appendix to Departmental Regulation 9500-3, Land Use Policy, which is included as exhibit A of this subpart. For assistance in locating and defining floodplains and wetlands, the locations and telephone numbers of the Federal Emergency Management Administration's regional offices have been included as exhibit J of this subpart, and similar information for the U.S. Fish and Wildlife Service's Wetland Coordinators has been included as exhibit K of this subpart. Given the importance of these resources, as emphasized in the Departmental Regulation, Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," it is FmHA or its successor agency under Public Law 103-354's policy not to approve or fund any proposals that, as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of these land uses or encroachment upon them. The only exception to this policy is if the approving official determines that

(i) There is no practicable alternative to the proposed action,

(ii) The proposal conforms to the planning criteria identified in paragraph (a)(2) of this section, and

(iii) The proposal includes all practicable measures for reducing the adverse impacts and the amount of conversion/encroachment.

(A) For Farmer Program loans and guarantees, and loans to Indian Tribes and Tribal Corporations, exhibit M of this subpart imposes additional and more restrictive requirements regard-

ing wetland and highly erodible land conservation.

(B) Unless otherwise exempted by the provisions of exhibit M, the proceeds of any Farmer Program loan or loan to an Indian Tribe or Tribal Corporation made or guaranteed by FmHA or its successor agency under Public Law 103-354 cannot be used.

(1) For a purpose that will contribute to excessive erosion of highly erodible land (as defined in exhibit M), or

(2) For a purpose that will contribute to conversion of wetlands (as defined in exhibit M) to produce an agricultural commodity.

(2) It is also recognized that unless carefully reviewed, some proposals designed to serve the needs of rural communities can adversely affect the existing economic base and settlement patterns of the community, as well as create development pressures on land and environmental resources essential to farm economies. An example of such a proposal might be the extension of utilities and other types of infrastructure beyond a community's existing settlement pattern and into important farmlands for the purpose of commercial or residential expansion, even though there is available space within the existing settlement pattern for such expansion. Not only may the loss of important farmlands unnecessarily result, but the community may be faced with the economic costs of providing public services to outlying areas, as well as the deterioration of its central business or commercial area; the latter may not be able to compete with the newer, outlying commercial establishments. These results are undesirable, and to avoid their occurrence, projects designed to meet rural community needs (*i.e.*, residential, industrial, commercial, and public facilities) will not be approved unless the following conditions are met.

(i) The project is planned and sited in a manner consistent with the policies of this section, the Farmland Protection Policy Act, and Departmental Regulation 9500-3 (exhibit A of this subpart).

(ii) The project is not inconsistent with an existing comprehensive and enforceable plan that guides growth and

reflects a realistic strategy for protecting natural resources, and the project is compatible, to the extent practicable, with State, unit of local government, and private programs and policies to protect farmland. (If no such plan or policies exist, there is no FmHA or its successor agency under Public Law 103–354 requirement that they either be prepared and adopted, as further specified in paragraph (a)(3) of this section.)

(iii) The project will encourage long-term, economically viable public investment by fostering or promoting development patterns that ensure compact community development, that is, development that is limited to serving existing settlement patterns or is located in existing settlement patterns, e.g., the rehabilitation and renovation of existing structures, systems and neighborhoods; infilling of development; the provision of a range of moderate-to-high residential densities appropriate to local and regional needs. When these development patterns or types are not practicable, the development must be contiguous with the existing settlement pattern and provide for a range of moderate-to-high residential densities appropriate to local and regional needs. It is recognized that some FmHA or its successor agency under Public Law 103–354 Community Programs projects are designed to serve rural residents, such as rural water and waste disposal systems and, therefore, cannot be limited in service area to these areas contiguous with existing settlement patterns. These types of projects will be designed to primarily serve existing structures and rural residents in noncontiguous areas. Any additional capacity within the system will be limited to meet reasonable growth needs, and, to the extent practicable, be designed to meet such needs within existing settlements and areas contiguous to them.

(3) The conditions specified in paragraph (a)(2) of this section should not be construed as advocating excessive densities, congestion, or loss of open space amenities within rural communities. Desirable living conditions can be obtained under these objectives, along with economic and social benefits for the community and the sur-

rounding farm operations. Additionally, these conditions should not be construed as requiring localities to develop plans which contain the conditions. In any instance in which these planning conditions or criteria do not exist within the project area, project reviews will not be postponed until the criteria are adopted. Rather, projects will be reviewed and funding decisions made in light of a project's consistency with the contents of this subpart (excluding paragraph (a)(2)(ii) of this section, which would not be applicable).

(b) *Endangered species.* FmHA or its successor agency under Public Law 103–354 will not authorize, fund, or carry out any proposal or project that is likely to

(1) Jeopardize the continued existence of any plant or wildlife species listed by the Secretary of the Interior or Commerce as endangered or threatened; or

(2) Destroy or adversely modify the habitats of listed species when such habitats have been determined critical to the species' existence by the Secretary of the Interior or Commerce, unless FmHA or its successor agency under Public Law 103–354 has been granted an exemption for such proposal by the Endangered Species Committee pursuant to paragraph (h) of section 7 of the Endangered Species Act.

(c) *Wild and scenic rivers.* FmHA or its successor agency under Public Law 103–354 will not provide financial assistance or plan approval for any water resource project that would have a direct and adverse effect on the values for which a river has been either included in the National Wild and Scenic Rivers System or is designated for potential addition. Additionally, FmHA or its successor agency under Public Law 103–354 will not approve or assist developments (commercial, industrial, residential, farming or community facilities) located below or above a wild, scenic or recreational river area, or on any stream tributary thereto which will invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area.

(d) *Historic and cultural properties.* As part of the environmental review process, FmHA or its successor agency under Public Law 103–354 will identify

any properties that are listed in, or may be eligible for, listing in the National Register of Historic Places and are located within the project's area of potential environmental impacts. Consultations will be undertaken with State Historic Preservation Officers and the Advisory Council on Historic Preservation, through the implementation of subpart F of part 1901 of this chapter, in order to determine the most appropriate course of action for protecting such identified properties or mitigating potential adverse impacts to them.

(e) *Coastal barriers.* Under the requirements of the Coastal Barrier Resources Act, FmHA or its successor agency under Public Law 103-354 will not provide financial assistance for any activity to be located within the Coastal Barrier Resources System unless

(1) Such activity meets the criteria for an exception, as defined in section 6 of the Act, and

(2) Consultation regarding the activity has been completed with the Secretary of the Interior.

(f) *Water and energy conservation.* FmHA or its successor agency under Public Law 103-354 will encourage the conservation of water and energy in the development of its programs and policies and will encourage applicants to incorporate all economically feasible water and energy-saving features and designs within their proposals.

(g) *Intergovernmental initiatives on important land resources.* On a broader scale, FmHA or its successor agency under Public Law 103-354 will advocate, in cooperation with other USDA agencies (through the USDA State-level committee system), the retention of important farmlands and forestlands, prime rangeland, wetlands and floodplains whenever proposed conversions to other uses

(1) Are caused or encouraged by actions or programs of a Federal Agency, or

(2) Require licensing or approval by a Federal Agency, unless other needs clearly override the benefits derived from retention of such lands.

(h) *Water quality.* FmHA or its successor agency under Public Law 103-354 will not provide financial assistance to any activity that would either impair a

State water quality standard, including designated and/or existing beneficial uses that water quality criteria are designed to protect, or that would not meet antidegradation requirements.

#### § 1940.305 Policy implementation.

(a) *Environmental impact analysis.* The implementation of the environmental impact analysis requirements described in this subpart serves as the primary mechanism for FmHA or its successor agency under Public Law 103-354 as follows:

(1) Incorporating environmental quality considerations into FmHA or its successor agency under Public Law 103-354 program and decision-making processes,

(2) Obtaining the views of the public and government agencies on potential environmental impacts associated with FmHA or its successor agency under Public Law 103-354 projects, and

(3) Using all practicable means to avoid or to minimize any possible adverse environmental effects of FmHA or its successor agency under Public Law 103-354 actions.

(b) *Natural resource management.* The State Director will develop a natural resource management guide. This guide will serve as an essential mechanism for implementing § 1940.304 of this subpart; and, therefore, the guide must be consistent with and reflect the objectives and policies contained in § 1940.304 of this subpart. At the same time, however, it must be tailored to take into account important State, regional, and local natural resource management objectives. The guide will be issued as a State Supplement for prior approval. The basic content, purposes, and uses of the guide are enumerated in exhibit B of this subpart and can be summarized as follows:

(1) The guide will serve as a mechanism for assembling an inventory of the locations within the State of those natural resources, land uses, and environmental factors that have been specified by Federal, State and local authorities as deserving some degree of protection or special consideration;

(2) The guide will summarize the various standards or types of Federal, State, or local protection that apply to